

1A In the Matter of the Verni Family Trust (Trust)**Case No. 10CEPR00639**

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole E.; of McCormick Barstow (for Antonietta "Rosa" Verni, daughter and Co-Trustee, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Armo, Lance, sole practitioner (for Leonard "Dino" Verni, son, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Status Hearing

Leonarda DOD: 7/31/2000		<p>CARMELA DeSANTIS, daughter and Trust Beneficiary, filed a <i>Petition to Remove Trustees; Appoint Receiver; Surcharge Trustees; Deny Trustees Compensation; Impose Constructive Trust on Assets; and Cause Proceedings to Trace and Recover Assets</i> on 7/26/2012.</p> <p>NICOLA "NICK" VERNI, son and Successor Trustee of the SURVIVOR'S TRUST, and ANTONIETTA "ROSA" VERNI, daughter and Trustee of the MERGED FAMILY SUB-TRUST, filed a <i>Response to Petition to Remove Trustees, etc.</i> on 9/27/12.</p> <p>CARMELA DeSANTIS filed a <i>Petition to Construe Trust Provision</i> on 7/26/2012.</p> <p>NICK VERNI and ROSA VERNI filed a <i>Response to Petition to Construe Trust Provision</i> on 9/27/2012.</p> <p>CARMELA DeSANTIS filed a <i>Petition to Establish Claim of Ownership, in Favor of Trust, to Property and for Order Directing its Transfer to the Trustees to Hold in Trust</i> on 8/14/2012.</p> <p>NICK VERNI and ROSA VERNI filed a <i>Response to Petition to Establish Claim of Ownership</i> on 9/27/12.</p> <p>CARMELA DeSANTIS filed <i>Amended Objections to First Account Current of Trustee</i>, and filed <i>Objections to Second Account Current of Trustee</i>, both filed on 7/26/2012.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued from 12/5/2012.</u></p> <p>Minute Order states Mr. Jaech requests additional time to review the ruling on the court trial that was just issued. Mr. Marchini requests to set the matter for court trial. Matter set for Court Trial on <u>9/10/2013</u> with a 15-day estimate. Matter is continued to 1/3/2013.</p> <p><u>Page 1B</u> is the <i>Petition to Remove Trustees, etc.</i></p> <p><u>Page 1C</u> is the <i>Petition to Construe Trust Provision.</i></p> <p><u>Page 1D</u> is the <i>Petition to Establish Claim of Ownership in Favor of Trust to Property, etc.</i></p> <p>1. Need verified status report and proof of service of notice of the status hearing pursuant to Local Rule 7.5(B).</p>
Saverio DOD: 5/25/2009			
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		<p>Reviewed by: LEG</p> <p>Reviewed on: 12/10/12</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 1A - Verni</p>	

1B In the Matter of the Verni Family Trust (Trust)

Case No. 10CEPR00639

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Antonietta "Rosa" Verni, daughter and Co-Trustee, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Armo, Lance, sole practitioner (for Leonard "Dino" Verni, son, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Petition to: (1) Remove Trustees; (2) Appoint Receiver; (3) Surcharge Trustees; (4) Deny Trustees Compensation; (5) Impose Constructive Trust on Assets; and (6) Cause Proceedings to Trace and Recover Assets [Prob. C. 15642, 16420 & 17200]

Leonarda DOD: 7/31/2000		CARMELA DeSANTIS , daughter and Trust Beneficiary, is Petitioner.	Petitioner states: <ul style="list-style-type: none">The VERNI FAMILY TRUST of 1999 was created by SAVERIO VERNI and LEONARDA VERNI on 6/10/1999, and was amended once by Settlers on the following day, 6/11/1999; Leonarda died on 7/31/2000, thereby causing the Trust to be divided into three sub-trusts: the VERNI MARITAL TRUST, the VERNI FAMILY TRUST, (which was amended once during both Trustors' lifetimes), and the VERNI SURVIVOR'S TRUST (copies of Trusts attached as Exhibit A);Following Leonarda's death, Saverio amended the SURVIVOR'S TRUST seven times, with the <i>Eighth Amendment</i> (the final) amending the SURVIVOR'S TRUST in its entirety;Saverio served as sole trustee of the three sub-trusts until his death on 5/25/2009, and upon his death the Marital Sub-Trust terminated and its principal was added to the Family sub-trust, which became the MERGED FAMILY SUB-TRUST;Pursuant to the Trust terms, ANTONIETTA ROSA VERNI, daughter, is first appointed and currently serves as Successor Trustee of the Merged Family Sub-Trust;Pursuant to the <i>Eighth Amendment</i> to Trust, NICOLA VERNI, son, is first appointed and currently serves as Successor Trustee of the SURVIVOR'S TRUST; <p style="text-align: center;">~Please see additional page~</p>	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 12/5/2012.</u>	
Saverio DOD: 5/25/2009					
Cont. from 091112, 100212, 120512					
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Reviewed by: LEG
Reviewed on: 12/10/12
Updates:
Recommendation:
File 1B - Verni

Petitioner states, continued:

- The beneficiaries of each of the Sub-Trusts are the Settlor's five children: **ANTONIETTA ROSA VERNI (Rosa), NICOLA VERNI (Nick), LEONARD VERNI (Dino), MARIA STANZIALE, and CARMELA DeSANTIS** (Petitioner); and with respect to specific distributions from the Survivor's Sub-Trust only: **ERLINDA MARCIANO VERNI (\$200,000.00) and ST. ANTHONY OF PADUA CATHOLIC CHURCH (\$200,000.00)**;
- Following the death of Saverio and Leonarda, the Merged Family Sub-Trust names Rosa as First Successor Appointee, and Maria as Second Successor Appointee;
- **Petitioner seeks a Court order pursuant to Probate Code § 15642 removing Rosa as trustee of the Merged Family Sub-Trust on the grounds noted below; Petitioner is informed that Maria will decline to serve as the next successor trustee of the Merged Family Sub-Trust, and Petitioner seeks a determination by the Court that Maria has declined to so serve;**
- The Eighth Amendment provides that upon Saverio's ceasing to act as trustee, Nick will serve as trustee of the Survivor's Sub-Trust;
- **Petitioner seeks a Court order pursuant to Probate Code § 15642 removing Nick as trustee of the Survivor's Sub-Trust on the grounds noted below; Petitioner also seeks a determination by the Court that Dino is not qualified to serve as next successor trustee of the Survivor's Sub-Trust based upon the allegations noted below;**

Petitioner states the Trust and interests of Petitioner will suffer loss or injury pending a hearing on this matter, and requests the Court immediately suspend the powers of the trustees, appoint a temporary trustee, and compel the trustees to surrender all Trust property to such temporary trustee(s) pursuant to Probate Code § 15642(e) and 17206

Petitioner also seeks a Court order removing the trustees and appointing a suitable person or persons selected by the Court to act as successor trustee(s) to receive the assets of the Family Sub-Trust and Survivor's Sub-Trust and to manage each respective Sub-Trust until such time as a final distribution of the respective Sub-Trust is made.

Petitioner's Grounds for Removal and Other Relief:

- Over Petitioner's objections, Trustees Nick and Rosa have provided a commingled accounting for the Merged Family and Survivor's Sub-Trusts, which fails to segregate each Sub-Trust's assets, liabilities, receipts and disbursements (*copies of the first and second joint accountings of trustees attached as Exhibit B*); the allegations that follow may not distinguish between the respective Sub-Trust because the nature the accounting will not allow it; [*the following allegations of the practices by the Trustees are all practices that continue to the present*]:
1. Based on the first and second accountings of Trustees, the Trustees are breaching their fiduciary duties by commingling the assets of the Merged Family Sub-Trust and Survivor's Sub-Trust;
 2. Based on the first and second accountings of Trustees, the Trustees are allowing real property assets of the Trust consisting of mature almond orchards to be exploited without compensation by Dino upon terms which are detrimental to the Trust and which confer a disproportionate benefit to beneficiary Dino; the Trustees purport to lease to Dino 102 acres of almond orchards in trust at **\$500** per acre; however, Dino does not pay actual rent, but instead provides receivables for his rent, and the receivables do not earn interest and are not actually collected by the Trust; according to the accountings, this practice has been going on for a number of years and the number of unpaid receivables are accumulating [*emphasis in original*];
 3. Based on the first and second accountings of Trustees, the Trustees are using Trust assets to pay the expenses of Dino's separate farming operations [*emphasis in original*];

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Petitioner's Grounds for Removal and Other Relief, continued:

4. Based on the first and second accountings of Trustees, the Trustees are using Trust resources to market and manage the sale of the products from the harvest of said orchards and to collect the receipts from those sales, all for the sole benefit of Dino [emphasis in original];
5. As a result of the matters alleged above, the Trust is being denied the profit on fully mature orchard land owned by the Trust, for which the Trust pays all cultural expenses and for which the Trust pays all administrative expenses incurred in the sale and collection of receipts; the Trust receives nothing in return and the profits from the operation, which belong to the Trust, have been and continue to be, diverted to Dino, all with full knowledge and acquiescence of the trustees [emphasis in original];
6. Based on the first and second accountings of Trustees, the Trustees are allowing Trust labor and equipment to be diverted to Dino's personal farming uses, while Dino is charging the Trust (and the Trustees are paying) for replacement farm labor and equipment purportedly supplied by Dino for use on other acreage owned by the Trust; the Trust owns all of the farming equipment necessary to farm its properties, and as revealed by the accountings, employs and contracts with farm laborers on a scale which is more than sufficient to meet, and appears to exceed, that which is needed for Trust farming operations;
7. Based on the first and second accountings of Trustees, Dino controls and uses a revolving charge account held jointly in his name and the name of Saverio; the account was opened *after* Saverio died because the first statement provided is for 6/6 – 7/6/2009, the month following Saverio's death and the previous balance shown on the statement is **\$0.00**; over the ~18 months following Saverio's death (period covered by the accountings) charges on the account totaled **\$183,661.17**; the Trustees have been paying these charges from Trust funds; in addition, in 2009 the Trustees have paid an additional **\$228,650.23** in credit charges for which no detail has been provided in the accountings, with a total cash Trust disbursement in 2009 of **\$807,644.43**; the Trustees purported to have paid in 2010 an additional **\$25,267.33** on lines of credit for which no detail has been provided, for a total Trust cash disbursement in 2010 of **\$1,016,930.15**; the Trustees have made such payments without adequate controls and information to ensure the debts have been incurred for Trust purposes; [examples of charges made to the Trust account are listed, such as for restaurants, department stores, grocery stores, clothing stores, florists, pet supply stores, and pharmacies]; these charges are not Trust related;
8. Some or all of the amounts charged by Dino and paid for by the Trustees have been for Dino's own personal use and benefit and for his separately owned business; other revolving debt charges paid for by the Trustees have been similarly used to benefit Dino to the detriment of the Trust and exclusion of its other beneficiaries;
9. The Trustees have allowed Dino to convert additional Trust property to his own use and benefit, including substantial quantities of almond meats; Dino's purported claim of right to such commodities and the Trustee's acquiescence to this claim of right, have resulted in depletion of Trust assets; the Trustees have completely failed to account for this inventory in their first and second accountings; other commodities produced by the Trust are being sold to third parties, e.g., peddlers at various farmer's markets in the Southern California region, and local restaurants and businesses, the proceeds of which are not reported in Trustees accountings and are being improperly diverted from the Trust; the sale proceeds of Trust commodities that are actually being reported in Trustee's accountings do not reflect actual amounts received;

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Petitioner's Grounds for Removal and Other Relief, continued:

10. The Trustees' first accounting acknowledges that real property distributions from 2 of the 3 Sub-Trusts made by Saverio during his lifetime to Dino and to Nick were improper and without valid authority, yet the Trustees have failed and refuse to act to reclaim and recoup said properties into the Trust;
 11. The Trustees have failed to disclose, account for, and marshal assets owned in trust and located in Italy;
 12. The Trustees are also allowing trust equipment, labor and resources to be used without compensation by Rosa in her personal farming business.
- Grounds for removal of a trustee by a Court pursuant to Probate Code § 15642 and 16420 include where (a) a trustee has committed a breach of trust; (b) where the trustee fails or declines to act; and (c) for other good cause;

Duties Violated by the Above Acts and Omissions: Trustees have committed numerous breaches of trust and violated trustee duties by their conduct [as provided in Probate Code § 16000 et seq., specific citations omitted] as follows, with limitation:

1. Duty to administer the Trust according to the Trust instrument;
2. Duty to administer the Trust solely in the interest of the beneficiaries;
3. Duty to deal impartially with beneficiaries and to act impartially in investing and managing the trust property;
4. Duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary;
5. Duty to take reasonable steps under the circumstances and take and keep control of and preserve the trust property;
6. Duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust;
7. Duty to keep the trust property separate from other property not subject to the trust, and to ensure that trust property is designated as property of the trust; and
8. Duty to take reasonable steps to enforce claims that are trust property.

Remedies Sought by Petitioner:

- In addition to removal of the Trustees and finding that the trustees are either unfit or unwilling to serve, Petitioners seek an order for the following [pursuant to Probate Code §§ 15642 and 16420, citations omitted]:
 1. To immediately suspend the powers of the Trustees, appoint a temporary Trustee or Trustees, and compel the Trustees to surrender all Trust property to such temporary Trustee(s);
 2. To remove the Trustees and to appoint a successor trustee or trustees to take possession of the Trust property and administer the Trust;
 3. To compel the Trustees to redress their breaches through the payment of monetary damages;
 4. To deny or otherwise reduce the compensation of the Trustees;
 5. Subject to § 18100, to impose a constructive trust on property of the Trust which has been wrongfully converted; and
 6. Subject to § 18100, to cause proceedings to trace and recover property and proceeds to which the Trust is entitled.

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Remedies Sought by Petitioner, continued:

- Petitioner has suffered damages, the extent of which is unknown, but which is subject to proof at trial;
- Pursuant to Probate Code §§ 16420 and 16440, Trustees Rosa and Nick should be surcharged in an amount equal to the aggregate of the following: any loss suffered by, or depreciation in value of, the Trust estate resulting from the breach of trust, with interest; any profit made by the trustees through the breach of trust, with interest; any profit that would have accrued to the Trust estate if the loss of profit is the result of the breach of trust, that is appropriate under the circumstances;
- Petitioner requests an award of attorney's fees pursuant to any and all appropriate statutes and law including Probate Code §§ 17211(b), 15642(c), and 11003(b); in addition, to the extent the instant Petition results in recovery of property which benefits all beneficiaries of the Trust, Petitioners request that the Court award attorney's fees to Petitioner based upon the so-called common fund theory and related substantial benefit doctrine.

Petitioner prays for an Order:

1. Immediately suspending the powers of the Trustees, appointing a temporary Trustee or Trustees, and compelling the Trustees to surrender all Trust property to such temporary Trustee(s);
2. Removing Nick Verni as Trustees of the Survivor's Sub-Trust;
3. Finding that successor trustee of the Survivor's Sub-Trust, Dino Verni, is not qualified to act as successor trustee;
4. Removing Rosa Verni as Trustee of the Marital Sub-Trust and Family Sub-Trust;
5. Finding that successor trustee of the Marital Sub-Trust and Family Sub-Trust, Maria Stanziale, is unwilling to act as successor trustee;
6. Appointing a receiver or temporary trustee following the hearing;
7. Surcharging the Trustees, Nick Verni and Rosa Verni;
8. Denying compensation to Trustees, Nick Verni and Rosa Verni;
9. Imposing a constructive trust on Trust assets wrongfully diverted from any and all of the Sub-Trusts at issue;
10. Directing the commencement of proceedings to trace and recover property and proceeds of any and all of the Sub-Trusts at issue; and
11. Ordering payment of attorney's fees and costs incurred or to be incurred by the Petitioner.

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Response to Petition to Remove Trustees; Appoint Receiver; Surcharge Trustees; Deny Trustees Compensation; Impose Constructive Trust on Assets; and Cause Proceedings to Trace and Recover Assets filed 9/27/2012 by NICOLA "NICK" VERNI, Trustee of the SURVIVOR'S TRUST, and ANTONIETTA "ROSA" VERNI, Trustee of the MERGED FAMILY SUB-TRUST, states:

- Trustees admit that Petitioner **CARMELA DeSANTIS** is a beneficiary of the Trusts, *[and that the three Sub-Trusts were created and amended as stated in the Petition, and that the Trust beneficiaries are as stated in the Petition]*;
- Trustees deny any allegations that Rosa has breached her fiduciary duties as Trustee, and Trustees object to Rosa being removed as Trustee of the Merged Family Sub-Trust;
- Trustee lack sufficient knowledge to admit or deny whether Maria Stanziale will decline to serve as the next successor trustee of the Merged Family Sub-Trust;
- Trustees deny any allegations that Nick has breached his fiduciary duties as Trustee, and Trustees object to Nick being removed as Trustee of the Survivor's Sub-Trust;
- Trustees deny any allegations that Dino acted improperly as it relates to the Trust or Trust assets; Trustees allege that Dino is qualified to serve as the next successor trustee of the Survivor's Sub-Trust;
- Trustees deny that the Trust will suffer any loss pending a hearing on this matter; Petitioner failed to provide any factual or legal support for her claim that the Trust will be harmed; Trustees have properly fulfilled their duties as Trustees, and there are insufficient grounds to suspend Trustee's powers;
- Trustees deny any allegations that they acted improperly or otherwise breached their fiduciary duties as Trustees; Trustees further object to being removed as Trustees of the Merged Family Sub-Trust and the Survivor's Sub-Trust;
- It is not incorrect, as Petitioner alleges, to merge the accounting of the three sub-trusts, and the reasons given by the Trustees for doing so are viable; Petitioner is attempting to merge the distribution scheme with the Trustee's accounting, which is incorrect;
- Trustees deny any allegations that the merged accounting is improper or somehow is in breach of their fiduciary duties as Trustees; the majority of transactions in the Trustees' account are not associated or chargeable to one Trust or the other in any different percentage than the ownership of the Trust's real property; the Trustees allege that for them to submit three separate accountings for each Sub-Trust would not produce any different result than as reflected in the merged Account;
- Trustees admit that Dino is leasing 102 acres of almond orchards from the Trust, and allege that the lease was established between Saverio and Dino prior to Saverio's death; after Saverio's death, Trustees continue to engage in this beneficial lease agreement with Dino;
- Trustees deny any allegations that the lease is improper or otherwise detrimental to the Trust and that the Trust receives nothing in return for the lease with Dino; the lease benefits the Trust in that Dino's cultivation and use of the land for agricultural purposes allows the Trustee to defer payment of substantial estate taxes, and the Trust benefits from the lease by the rent paid by Dino;
- Trustees admit that a certain amount of assets may be used to pay certain expenses relating to the almond orchards; however, it is agreed that Dino will reimburse the Trust for any expenses incurred for his separate farming operations; Trustees deny any allegations that his arrangement is improper; Trustees continue to farm the Trust land in the same way that Saverio operated the farm during his lifetime;
- Trustees admit that Trust utilizes and pays for the use of farming equipment owned by Dino; however, Trustees deny that such arrangement is improper, and deny that the Trust owns sufficient equipment to farm its properties; Trust properly makes use of equipment owned by Dino, and the Trust properly pays for the utilization of Dino's farming equipment;

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Response of Nick and Rosa to Petition to Remove Trustees, continued:

- Trustees acknowledge that Dino has access to a revolving charge account held jointly between him and Saverio; however, Trustees deny that Dino's use of such account is improper; Dino, along with the Trustees, manage and cultivate property and crops owned by the Trust; expenses are necessarily incurred as a result of Dino's work in maintaining and managing the Trust property;
- As stated previously, Dino's management of certain Trust property is beneficial to the Trust, as it permits the Trust to defer payment of substantial estate taxes, and Dino earns money for the Trust when said Trust crops are harvested and sold; nothing about this arrangement is improper or otherwise causes Trustees to breach their fiduciary duties;
- Trustees deny that all of the amounts charged by Dino were for his own personal use and benefit; it is agreed that Dino reimburse the Trust for any expenses incurred for his personal use or separate farming operations;
- Trustees admit that Dino is leasing 102 acres of almond orchards from the Trust; however, Trustees deny that the lease has resulted in a depletion of Trust assets, and further deny that Dino has converted Trust property for his personal use and benefit; in fact, Dino was specifically devised an undivided ½ interest in the land containing the orchards;
- Trustees admit that certain commodities grown and produced by the Trust are sold to third parties at the roadside of the property, at farmer's markets, and other locations; however, Trustees deny all other allegations made by Petitioner [that the proceeds of these sales are not reported in the Trustee's accountings and are being improperly diverted from the Trust];
- Trustees deny Petitioner's allegations [that Trustee's accountings do not reflect actual amounts received from sale of commodities, that improper real property distributions made by Saverio acknowledged by Trustees were not reclaimed or recouped by Trustees, that Trustee have failed to disclose and account for assets owned in trust and located in Italy, and that the Trustees are allowing equipment, labor and resources to be used without compensation by Rosa in her personal farming business];
- Trustees deny that they engaged in conduct that justifies their removal under Probate Code § 15642 and 16420, and further deny that there is any legal basis to remove them as Trustees of the Merged Family Sub-Trust or Survivor's Trust; Trustees specifically deny that they have breached any of the duties owed as Trustees;
- Trustees deny that Petitioner is entitled to any remedy pursuant to her Petitioner; [Trustees deny that Petitioner has suffered damages; Trustees deny that the Trustees should be surcharged any amount];
- Trustees object to any surcharge being imposed, as Trustees deny all allegations of wrongdoing on their part; Trustees deny allegations [that Petitioner should be awarded attorney fees].

Respondent Trustees pray for an Order:

1. That Petitioner take nothing by way of her *Petition*; and
2. For an award of attorneys' fees and costs of suit to Respondents.

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Antonietta "Rosa" Verni, daughter and Co-Trustee, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Armo, Lance, sole practitioner (for Leonard "Dino" Verni, son, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Petition to Construe Trust Provision [Prob. C. 17200]

Leonarda DOD: 7/31/2000	<p>CARMELA DeSANTIS, daughter and Trust Beneficiary, is Petitioner.</p> <p>Petitioner states:</p> <ul style="list-style-type: none"> The VERNI FAMILY TRUST of 1999 was created by SAVERIO VERNI and LEONARDA VERNI on 6/10/1999, and was amended once by Settlor on the following day, 6/11/1999; Leonarda died on 7/31/2000, thereby causing the Trust to be divided into three sub-trusts: the VERNI MARITAL TRUST, the VERNI FAMILY TRUST, (which was amended once during both Trustors' lifetimes), and the VERNI SURVIVOR'S TRUST (copies of Trusts attached as Exhibit A); Following Leonarda's death, Saverio amended the SURVIVOR'S TRUST seven times, with the <i>Eighth Amendment</i> (the final) amending the SURVIVOR'S TRUST in its entirety; Saverio served as sole trustee of the three sub-trusts until his death on 5/25/2009, and upon his death the Marital Sub-Trust terminated and its principal was added to the Family sub-trust, which became the MERGED FAMILY SUB-TRUST; The instant petition relates to a provision contained in the SURVIVOR'S SUB-TRUST; Pursuant to the Eighth Amendment to Trust, NICOLA VERNI, son, is first appointed and currently serves as Successor Trustee of the SURVIVOR'S SUB-TRUST; The beneficiaries of each of the Sub-Trusts are the Settlor's five children: ANTONIETTA ROSA VERNI (Rosa), NICOLA VERNI (Nick), LEONARD VERNI (Dino), MARIA STANZIALE, and CARMELA DeSANTIS (Petitioner); and with respect to specific distributions from the Survivor's Sub-Trust only: ERLINDA MARCIANO VERNI (\$200,000.00) and ST. ANTHONY OF PADUA CATHOLIC CHURCH (\$200,000.00); <p align="center"><i>~Please see additional page~</i></p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued from 12/5/2012.</u></p>
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Citation		
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	Reviewed on: 12/10/12	
	Updates:	
	Recommendation:	
	File 1C – Verni	

Petitioner seeks and requests a judicial declaration from the Court concerning the proper construction of Subsection 1, of Section B, or Article IV of the SURVIVOR'S SUB-TRUST [refer to copy of Trust or Paragraph 11 of Petition for exact language requiring apportionment of the residue of the trust estate into equal shares for Trustor's living children.]

- Over Petitioner's objections, Trustees Nick and Rosa have provided a commingled accounting for the Merged Family and Survivor's Sub-Trusts, which fails to segregate each Sub-Trust's assets, liabilities, receipts and disbursements;
- The failure to appropriately segregate assets, liabilities, receipts and disbursements among the Sub-Trusts prevents the Court, trustee and beneficiaries from determining the size and holdings of the **SURVIVOR'S SUB-TRUST**; because the **SURVIVOR'S SUB-TRUST** will be used to fund the above-referenced equalization provision, any appropriate increase in size to that particular Sub-Trust will allow greater realization of the Trustor's intent and will provide a means for effectuating the equalization of prior distributions; conversely, any inappropriate decrease in the size of the **SURVIVOR'S SUB-TRUST** will undermine the Trustor's intent and deny the Trustee the ability to effectuate an equalization;
- **The Trustee of the SURVIVOR'S SUB-TRUST believes that distributions made during Saverio's lifetime should not be considered for purposes of the equalization process; Petitioner believes this to be contrary to the language of the provision and intent of the Trustor;**
- Saverio made during his lifetime numerous distributions of real and personal property, including Trust property, to various beneficiaries of the Trust, and in particular, to Nick (Trustee of **SURVIVOR'S SUB-TRUST**), to Dino, and to Rosa (Trustee of the Family Sub-Trust); the distributions include two Madera properties transferred to Nick and Dino without authority; real property in Del Rey transferred to Rosa; a portion of the Auberry North property transferred to Nick and Dino; and real property in Chowchilla transferred to Rosa;
- Petitioner contends these distributions and others must be accounted for in order to give effect to the equalization provision contained in the **SURVIVOR'S SUB-TRUST**; Petitioner believes that failure to account for the lifetime distributions will result in a vastly reduced final distribution to Petitioner and Maria Stanziale;
- **An actual controversy exists between Petitioner and the Trustee of the SURVIVOR'S SUB-TRUST:**
 - The Trustee contends that the aforementioned equalization provision does not require the consideration of distributions made to beneficiaries during the lifetime of Saverio; Trustee contends that only distributions that are to be made upon or after Saverio's death should be considered for purposes of equalization.
 - Petitioner contends that the equalization provision contemplates that material distributions made during Saverio's lifetime should be included among those distributions considered for purposes of effecting the equalization provision.
- Petitioner desires a judicial determination that the equalization provision requires the Trustee of the **SURVIVOR'S SUB-TRUST** to determine the value of material distributions made during the lifetime of Saverio in addition to those that are to be made upon or after his death to effectuate the equalization provision.

Petitioner prays for:

1. A judicial determination concerning the proper construction of the equalization provision, and a judicial declaration that distributions made during the lifetime of Saverio Verni, in addition to those made upon or after death, be considered for purposes of the equalization process; and
2. An award of attorney's fees to the extent allowed by law; and
3. Costs of suit.

~Please see additional page~

Response to Petition to Construe Trust Provision filed 9/27/2012 by NICOLA "NICK" VERNI, Trustee of the SURVIVOR'S TRUST, and ANTONIETTA "ROSA" VERNI, Trustee of the MERGED FAMILY SUB-TRUST, states:

- Trustees admit that Petitioner **CARMELA DeSANTIS** is a beneficiary of the Trusts, *[and that the three Sub-Trusts were created and amended as stated in the Petition, and that the Trust beneficiaries are as stated in the Petition; Trustees admit that **NICK** is Trustee of the **SURVIVOR'S SUB-TRUST**];*
- Trustees are at a loss to understand: (a) the reason such a Petition has been filed at this time; and (b) the relief requested by Petitioner;
- Trustees acknowledge that the *Petition* relates to a provision in the **SURVIVOR'S SUB-TRUST**; however, it is a provision that relates to final distribution of the **SURVIVOR'S SUB-TRUST**, and therefore the *Petition* has been brought by Petitioner prematurely; Trustees are not yet in a position to complete final distribution of the **SURVIVOR'S SUB-TRUST** as they are dealing with estate tax matters, litigation pertaining to a claim against the Sub-Trusts brought by Saverio's spouse, and distribution of specific bequests;
- The operative portion of Subsection 1, of Section B, or Article IV of the **SURVIVOR'S SUB-TRUST** *[refer to Paragraph 11 of Response for exact language requiring apportionment of the residue of the trust estate into equal shares for Trustor's living children]* relates to distribution equalization of Trust assets, the sources of which are assets owned as follows: (a) by the **SURVIVOR'S SUB-TRUST**; (b) by the Marital Sub-Trust; (c) by the Family Sub-Trust; (d) by Saverio individually; or (e) as a result of Saverio's death;
- The collective assets of the Sub-Trusts have been identified by Trustees on their accounting as of the date of Saverio's death; Trustees have not discovered any assets that were owned by Saverio at the time of his death other than:
 - (1) A checking account with minimal balances (<\$1k);
 - (2) A CD valued at **~\$205,000.00** which designated Dino as the pay-on-death beneficiary; most of the sum has been collected by the Trustees and added to the Sub-Trusts;
 - (3) Cash in a safety deposit box of **\$10,000.00**; most of the sum has been collected by the Trustees and added to the Sub-Trusts;
 - (4) Certain annuity contracts which contained beneficiary designations directing proceeds to be paid to such beneficiaries as a result of Saverio's death; annuities were payable to Saverio's children in equal shares and do not require equalization.
- The assets owned by the Sub-Trusts which are specifically devised, over which the equalization provision operates, consist of:
 - (1) Assets which constitute the **VERNI OLIVE OIL COMPANY**;
 - (2) A portion of the "Auberry Ranch" consisting of two parcels of ~212 acres held in the Marital-Sub-Trust and Family Sub-Trust;
 - (3) An undivided interest in two parcels of real estate in Madera County consisting of ~130 acres associated with in the Marital-Sub-Trust;
 - (4) All farm machinery and equipment, tractors, farm vehicles, and farming implements.
- Petitioner refers to certain properties:
 - (1) Two Madera properties consisting of ~130 acres; same property noted in (3) above;
 - (2) Real property in Del Rey (~42.5 acres) transferred to **ROSA**; the property is in Clovis; the Trustees allege that the property was acquired by Rosa as compensation for labor provided to the Trustors, and she developed and improved the property with her own funds;
 - (3) A ~160 acre portion of the Auberry North property; Trustees allege this property was purchased by **NICK** and **DINO** with their own funds; both Nick and Dino have produced documentation which clearly shows that they used their own funds in acquiring the property, and they have already provided that documentation to Petitioner;
 - (4) Real property in Chowchilla (~129 acres) transferred to **ROSA**; there is no such property;

~Please see additional page~

Respondent Trustees pray for an Order:

1. That the equalization provision does not operate over lifetime gifts owing to the simple language of the provision, and also because the lifetime gifts which Petitioner alleges in her *Petition* were actually purchases by the beneficiaries; and
2. For an award of attorneys' fees and costs of suit to Respondents.

1D In the Matter of the Verni Family Trust (Trust)**Case No. 10CEPR00639**

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole E.; of McCormick Barstow (for Antonietta "Rosa" Verni, daughter and Co-Trustee, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Armo, Lance, sole practitioner (for Leonard "Dino" Verni, son, and Nicola "Nick" Verni, son and Co-Trustee)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Petition to Establish Claim of Ownership, in Favor of Trust, to Property and for Order Directing its Transfer to the Trustees to Hold in Trust (Prob. C. 850, 17200.1)

Leonarda DOD: 7/31/2000	CARMELA DeSANTIS , daughter and Trust Beneficiary, is Petitioner. Petitioner states: <ul style="list-style-type: none">The VERNI FAMILY TRUST of 1999 was created by SAVERIO VERNI and LEONARDA VERNI on 6/10/1999, and was amended once by Settlers on the following day, 6/11/1999; Leonarda died on 7/31/2000, thereby causing the Trust to be divided into three sub-trusts: the VERNI MARITAL TRUST, the VERNI FAMILY TRUST, (which was amended once during both Trustees' lifetimes), and the VERNI SURVIVOR'S TRUST (copies of Trusts attached as Exhibit A);Following Leonarda's death, Saverio amended the SURVIVOR'S TRUST seven times, with the <i>Eighth Amendment</i> (the final) amending the SURVIVOR'S TRUST in its entirety;Saverio served as sole trustee of the three sub-trusts until his death on 5/25/2009, and upon his death the Marital Sub-Trust terminated and its principal was added to the Family sub-trust, which became the MERGED FAMILY SUB-TRUST;Pursuant to the Trust terms, ANTONIETTA ROSA VERNI, daughter, is first appointed and currently serves as Successor Trustee of the Merged Family Sub-Trust;Pursuant to the <i>Eighth Amendment</i> to Trust, NICOLA VERNI, son, is first appointed and currently serves as Successor Trustee of the SURVIVOR'S TRUST;The beneficiaries of each of the Sub-Trusts are the Settlor's five children: ANTONIETTA ROSA VERNI (Rosa), NICOLA VERNI (Nick), LEONARD VERNI (Dino), MARIA STANZIALE, and CARMELA DeSANTIS (Petitioner); and with respect to specific distributions from the Survivor's Sub-Trust only: ERLINDA MARCIANO VERNI (\$200,000.00) and ST. ANTHONY OF PADUA CATHOLIC CHURCH (\$200,000.00); <p style="text-align: center;">~Please see additional page~</p>	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 12/5/2012.</u>
Saverio DOD: 5/25/2009		
Cont. from 100212, 120512		
Aff.Sub.Wit.		
✓ Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		X
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
✓ Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	Reviewed by: LEG	
	Reviewed on: 12/10/12	
	Updates:	
	Recommendation:	
	File 1D - Verni	

Petitioner states, continued:

- Over Petitioner's objections, Trustees Nick and Rosa have provided a commingled accounting for the Merged Family and Survivor's Sub-Trusts, which fails to segregate each Sub-Trust's assets, liabilities, receipts and disbursements; the allegations that follow may not distinguish between the respective Sub-Trust because the nature the accounting will not allow it; *[the following allegations of the practices by the Trustees are all practices that continue to the present]:*

Petitioner's requests for specific relief:**Almond Crop and Almond Crop Proceeds: Petitioner seeks relief under Probate Code § 850 in connection with almond crops grown on Trust property following Saverio's death, almond meat on hand at the time of Saverio's death, and any proceeds from said crops and harvests:**

1. Based on the first and second accountings of Trustees, the Trustees are allowing real property assets of the Trust consisting of mature almond orchards to be exploited without compensation by Dino upon terms which are detrimental to the Trust and which confer a disproportionate benefit to beneficiary Dino; the Trustees purport to lease to Dino 102 acres of almond orchards in trust at **\$500** per acre; however, Dino does not pay actual rent, but instead provides receivables for his rent, and the receivables do not earn interest and are not actually collected by the Trust; according to the accountings, this practice has been going on for a number of years and the number of unpaid receivables are accumulating [emphasis in original];
2. Based on the first and second accountings of Trustees, the Trustees are using Trust assets to pay the expenses of the farming operations on the almond orchards [emphasis in original];
3. Based on the first and second accountings of Trustees, the Trustees are using Trust resources to market and manage the sale of the products from the harvest of said orchards and to collect the receipts from those sales, all for the sole benefit of Dino [emphasis in original];
4. As a result of the matters alleged above, the Trust is being denied the profit on fully mature orchard land owned by the Trust, for which the Trust pays all cultural expenses and for which the Trust pays all administrative expenses incurred in the sale and collection of receipts; the Trust receives nothing in return and the profits from the operation, which belong to the Trust, have been and continue to be, diverted to Dino, all with full knowledge and acquiescence of the trustees [emphasis in original];
5. Petitioner believes that the Trustees have allowed Dino to convert the following Trust property to his own use and benefit, i.e., substantial quantities consisting of **~235,000 lbs.** of almond meat that the Trust had on hand at the time of Saverio's death, all almond crops grown on Trust land since Saverio's death and all proceeds resulting from those crops; Dino's claim of right to such commodities and the Trustee's acquiescence to this claim of right have resulted in a depletion of Trust assets; Trustees have completely failed to account for this inventory in their first and second accountings;
6. Petitioner believes that Dino contends he is entitled to the **~235,000 lbs.** of almond meat that the Trust had on hand at the time of Saverio's death, all almond crops grown on Trust land since Saverio's death and all proceeds resulting from those crops; Petitioner contends that the leasing arrangement is a sham and has been merely a means by which Trust property and profits have been improperly diverted to Dino;

~Please see additional page~

Petitioner's requests for specific relief, continued:

Olive Crop and Olive Crop Proceeds: Petitioner seeks relief under Probate Code § 850 in connection with olive crops grown on Trust property following Saverio's death, olives on hand at the time of Saverio's death, and any proceeds from said crops and harvests;

1. Although the personal property assets of the Verni Olive Oil Company are specifically devised to Dino, the olive groves themselves are located, in whole or in part, on Trust land not devised to Dino;
2. With only minor exception, the olive groves are held in trust for the benefit of several groups of beneficiaries of the Sub-Trusts;
3. Dino has been converting the crops from these olive groves, olive oil inventory and supply on hand, to his own benefit or the benefit of the Verni Olive Oil Co. (which Dino owns) and to the exclusion of other beneficiaries;
4. Petitioner alleges **78 acres** of olive groves are located on land held for the benefit of Dino as to an undivided 50% interest and for the benefit of the residual beneficiaries of the Survivor's Sub-Trust (subject to the equalization provision) as to the remaining undivided 50%;
5. Petitioner alleges the crops were grown on land belonging to the Trust; were planted, cultivated, and harvested using Trust resources, and were financed by the Trust;
6. The Trustees have allowed Dino to convert the olive inventory on hand at the time of Saverio's death, the harvest from subsequent olive crops grown on Trust property since Saverio's death, and proceeds from the harvest of said crops; Dino's purported claim of right to such commodities and the Trustee's acquiescence to this claim of right, have resulted in a depletion of Trust assets; the Trustees have completely failed to account for this inventory in their accountings;
7. Dino contends he is entitled to the olive inventory that the Trust had on hand at the time of Saverio's death, all olive crops grown on Trust land since Saverio's death, and all proceeds resulting from those crops; Petitioner contends said harvests, crops and proceeds are Trust property which has been improperly diverted to Dino, to the exclusion of Petitioner and other beneficiaries;
8. Petitioner contends the olives on hand at the time of Saverio's death rightfully belong to the Trust, and all olive crops grown and/or harvested on Trust property since Saverio's death rightfully belong to the Trust; Petitioner contends that the Trust is entitled to return of Trust assets received by Dino and return of any proceeds from the sale of said assets, or alternatively, judgment against the party receiving said assets for their value;
9. Petitioner contends buildings owned by the Trust are used without compensation to the Trust by Dino to conduct the olive oil business; the Trust is entitled to possession of the buildings or their rental value;
10. The taking, concealing and/or disposal of the property was wrongful and done in bad faith; Dino, and any other beneficiary complicit in such taking, concealing and/or disposal shall be liable for twice the value of the property recovered in addition to any other remedies available pursuant to Probate Code § 859;
11. Petitioner has apprised the Trustees of their claims through their attorneys of record; however, Trustees will not enforce the causes of action against Dino and have been complicit in Dino's wrongful conversion of the olive crops and proceeds; Trustees' failure to bring suit was negligent, wrongful and otherwise improper.

~Please see additional page~

Petitioner's requests for specific relief, continued:

Other Crops (Stone Fruit, Grapes, Etc.) and Crop Product: Petitioner seeks relief under Probate Code § 850 in connection with other crops grown on Trust property following Saverio's death, inventory from the harvests of said crops on hand at the time of Saverio's death, and any proceeds from said crops and harvests;

1. Trustees have failed to account for several crops grown on Trust land during 2009, including cherries, plums, and grapes; (Trustees have accounted for crops of that type for 2010.)
2. Petitioner alleges these types of crops have been in production for several years prior to 2010, that a harvest for each type of crop occurred in 2009, and that inventory from the harvest of said crops was on hand at the time of Saverio's death or during the remainder of 2009;
3. Petitioner alleges these crops were grown on land belonging to the Trust, were planted, cultivated and harvested using Trust resources, and were financed by the Trust;
4. The Trustees have allowed Dino and other beneficiaries to convert these 2009 crops and inventory on hand at the time of Saverio's death, and proceeds from those crops, to the exclusion of other beneficiaries; Petitioner alleges that Dino's and any other beneficiary's claim of right to such commodities and the Trustees' acquiescence to this claim of right, have resulted in depletion of the Trust assets; the Trustees have completely failed to account for this inventory in their accountings;
5. Dino, and any other beneficiaries receiving these types of crops, contend they are entitled to the 2009 inventory that (a) the Trust had on hand at the time of Saverio's death, (b) was harvested during 2009 following Saverio's death, and all proceeds resulting from those crops; Petitioner contends that said harvests, crops and proceeds are Trust property which has been improperly diverted to Dino and/or other Beneficiaries, to the exclusion of Petitioner and other beneficiaries;
6. Petitioner contends the 20089 crop harvest on hand at the time of Saverio's death and all such crops grown and/or harvested on Trust property since Saverio's death rightfully belong to the Trust; Petitioner contends that to the extent Dino has received Trust assets, the Trust is entitled to the return of said assets and return of any proceeds from the sale of said assets, or alternatively, judgment against the party receiving said assets for their value;
7. The taking, concealing and/or disposal of the property was wrongful and done in bad faith; Dino, and any other beneficiary complicit in such taking, concealing and/or disposal shall be liable for twice the value of the property recovered in addition to any other remedies available pursuant to Probate Code § 859;
8. Petitioner has apprised the Trustees of their claims through their attorneys of record; however, Trustees will not enforce the causes of action against Dino and have been complicit in Dino's wrongful conversion of the 2009 crops and inventory on hand, and proceeds from said crops; Trustees' failure to bring suit was negligent, wrongful and otherwise improper.

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Petitioner's requests for specific relief, continued:

Other Inventory on Hand at Date of Death: Petitioner seeks relief under Probate Code § 850 in connection with other inventory on hand at the time of Saverio's death;

1. The Trustees have failed to account for other inventory on hand at the time of Saverio's death, including firewood and olive oil;
2. This inventory on hand at the time of Saverio's death was substantially greater than that reported by Trustees;
3. The inventory belongs to the Trust and was produced utilizing crops and timber from Trust land and Trust financing and resources;
4. The Trustees have allowed Dino and other beneficiaries to convert this other inventory on hand at the time of Saverio's death, and proceeds from the inventory, to the exclusion of other beneficiaries; Petitioner alleges that Dino's and any other beneficiary's purported claim of right to such commodities and the Trustees' acquiescence to this claim of right, have resulted in depletion of the Trust assets;
5. Dino, and any other beneficiaries receiving this other inventory, contend they are entitled to the inventory; Petitioner contends this other inventory on hand at the time of Saverio's death rightfully belongs to the Trust; Petitioner contends that to the extent Dino has received Trust assets, the Trust is entitled to the return of said assets and return of any proceeds from the sale of said assets, or alternatively, judgment against the party receiving said assets for their value;
6. The taking, concealing and/or disposal of the property was wrongful and done in bad faith; Dino, and any other beneficiary complicit in such taking, concealing and/or disposal shall be liable for twice the value of the property recovered in addition to any other remedies available pursuant to Probate Code § 859;
7. Petitioner has apprised the Trustees of their claims through their attorneys of record; however, Trustees will not enforce the causes of action against Dino and have been complicit in Dino's wrongful conversion of the other inventory on hand, and proceeds; Trustees' failure to bring suit was negligent, wrongful and otherwise improper.

Proceeds from Sale of Trust Real Property:

1. In 2004, Saverio, and possibly Dino and Nick, granted an option to DeYoung Properties to purchase certain real property, which included property held in the Trust and also property that was held (at least nominally) in the name of Nick and Dino; under the option, DeYoung could take all or less than all of the optioned property; DeYoung Properties paid **~\$3,000,000.00** for the option and the terms of the option allowed DeYoung Properties to use said funds toward the purchase price in the event DeYoung exercised the option as to any of the optioned property;
2. Nick and Dino received **\$1,000,000.00** of the option payment from DeYoung Properties prior to DeYoung exercising its rights under the option, and Nick and Dino each received **\$500,000.00**;
3. DeYoung Properties ultimately exercised the option as to some, but not all, of the optioned property; however, the property DeYoung purchased under the option was Trust property that was subject to the option, not the property that was held (at least nominally) in the name of Nick and Dino;
4. DeYoung used the option monies it had previously paid to satisfy the purchase price of the Trust property; thus, upon DeYoung opting to take Trust property in return for the option monies paid, said funds rightfully became property of the Trust; however, Nick and Dino never returned the money they received to the Trust;

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Petitioner's requests for specific relief, continued:

5. Dino and Nick contend they are entitled to keep the **\$1,000,000.00**; Petitioner contends the money is Trust property which has been improperly retained by Dino and Nick to the exclusion of the Trust, Petitioner, and other beneficiaries;
6. Petitioner contends that the Trust is entitled to return of said money, or alternatively, judgment against the parties receiving said asset for its value;
7. The taking, concealing and/or disposal of the property was wrongful and done in bad faith; Dino, and any other beneficiary complicit in such taking, concealing and/or disposal shall be liable for twice the value of the property recovered in addition to any other remedies available pursuant to Probate Code § 859;
8. Petitioner has apprised the Trustees of their claims through their attorneys of record; one Trustee, Nick, is retaining ½ of the funds; the other Trustee, Rosa, is unwilling to act to obtain return of the money; thus, the Trustees will not enforce the causes of action against Dino and have been complicit in Dino's wrongful conversion of the other inventory on hand, and proceeds; Trustees' failure to bring suit was negligent, wrongful and otherwise improper.

Annuity Received by Erlinda Verni: Trust funds were used to purchase an annuity for Erlinda Verni, Saverio's spouse; Trust funds use to purchase the annuity were improperly obtained, in whole or in part, from the Family Sub-Trust and/or Marital Sub-Trust;

1. The Trustee of the Merged Family Sub-Trust, Rosa, has allowed Erlinda to keep the annuity, to the exclusion of the other beneficiaries; Erlinda's purported claim of right to the annuity has resulted in depletion of Trust assets;
2. Erlinda contends she is entitled to the annuity and any payments received as a result of it; Petitioner contends that the annuity and any payments are Trust property which has been improperly diverted to Erlinda, to the exclusion of Petitioner and other beneficiaries;
3. Petitioner contends the annuity rightfully belongs to the Trust; to the extent Erlinda has received annuity payments or payments in exchange for the annuity, the Trust is entitled to return of said payments, or alternatively, judgment against Erlinda for their value;
9. Petitioner has apprised the Trustee of the Merged Family Sub-Trust, Rosa, through her attorneys, of this claim; the Trustee is unwilling to act to obtain return of the assets; thus, the Trustee will not enforce the causes of action against Erlinda; Trustees' failure to bring suit was negligent, wrongful and otherwise improper.

Petitioner prays for an Order:

1. Determining the that following is property of the Trust estate:
 - (a) **Almond crops:** (i) The almond meat inventory on hand at the date of Saverio's death; (ii) all almond crops grown on Trust land since Saverio's death; and (iii) proceeds from the sale of the almond inventory and crops;
 - (b) **Olive crops:** (i) The olive oil, olive crop and olive inventory on hand at the date of Saverio's death; (ii) all olive crops grown on Trust land since Saverio's death; and (iii) proceeds from the sale of the olive oil, inventory and crops;
 - (c) **Other crops (Stone Fruit, Grapes, Etc.):** (i) The inventory of other crop grown on Trust land, on hand at the time of Saverio's death but not reported in the Trustee's First Account; (ii) all such crops grown on Trust land since Saverio's death and during 2009; and (iii) proceeds from the sale of the inventory and crops;

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Petitioner prays for an Order, continued:

- (d) **Other Inventory on Hand:** (i) The inventory of firewood and olive oil on hand at the time of Saverio's death but not reported in the Trustee's First Account; (ii) all such items produced from products grown on Trust land since Saverio's death and during 2009; [and (iii) proceeds from the sale of the other inventory;]
- (e) **Proceeds from Sale of Trust Real Property:** The money received by Nick and Dino from DeYoung Properties in connection with the option to purchase land and used by DeYoung Properties to actually purchase Trust land which sum is believed to be not less than **\$1,000,000.00**;
2. Directing each of the beneficiaries in possession or holding the property to transfer such property to the Trustees to hold for the benefit of the Trust and the appropriate Sub-Trust(s);
 3. Directing each of the beneficiaries in possession or holding any proceeds from the sale or exchange of any of the property to transfer such proceeds to the Trustees to hold for the benefit of the Trust and the appropriate Sub-Trust(s);
 4. For judgment in favor of the Trustees of the Trust against any beneficiary who received the Trust property and proceeds, in an amount to be determined and as required to compensate for all of the detriment and damages cause to the Trust; and
 5. For treble damages pursuant to Probate Code § 859.

Response to Petition to Establish Claim of Ownership in Favor of Trust to Property, and for Order Directing its Transfer to the Trustees to Hold in Trust filed 9/27/2012 by NICOLA "NICK" VERNI, Trustee of the SURVIVOR'S TRUST, and ANTONIETTA "ROSA" VERNI, Trustee of the MERGED FAMILY SUB-TRUST, states:

- Trustees admit that Petitioner **CARMELA DeSANTIS** is a beneficiary of the Trusts *[and that the three Sub-Trusts were created and amended as stated in the Petition, and that the Trust beneficiaries are as stated in the Petition]*; however, Trustees deny that they have negligently, wrongfully or otherwise improperly refused to enforce claims stated in the *Petition*;
- Trustees admit that they have provided a joint accounting for the three Sub-Trusts; however, they deny such joint accounting is improper; the majority of transactions in the Trustees' account are not associated or chargeable to one Trust or the other in any different percentage than the ownership of the Trust's real property; the Trustees allege that for them to submit three separate accountings for each Sub-Trust would not produce any different result than as reflected in the merged Account;
- Trustees admit that Dino is leasing 102 acres of almond orchards from the Trust for **\$500** per acre; Trustees deny allegations that the lease is invalid or is detrimental to the Trust; the lease is beneficial to the Trust;
- Trustees admit that Trust assets may have been used to pay certain farming expenses relating to the almond orchards; however, to the extent that the Trust paid farming expenses for Dino's separate farming operations, it was agreed that Dino would reimburse the Trust for any farming expenses that were paid for by the Trust for such expenses;

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Response to Petition to Establish Claim of Ownership, continued:

- The farming operations continue to be run in a similar manner to Saverio's conducting of the farming operations while he was alive; it was agreed Dino would reimburse the Trust for any farming expenses that were paid for by the Trust for his separate farming operations;
- Trustees admit that Dino continues to lease the 102 acres of almond orchard, and allege that the lease was established between Saverio and Dino prior to Saverio's death; Trustees deny any implications that the lease is improper as it was Saverio that granted the lease to Dino in the first place; Trustees allege the lease was entered into before Saverio's death and Trustees have continued the beneficial lease after his death;
- Trustees admit the Trust has paid certain cultural expenses and administration expenses incurred in the sale and collection of receipts; Trustees deny all other allegations of Petitioner that the Trust is being denied the profit on fully matured orchard land owned by the Trust that is being diverted to Dino; Trustees further deny that the Trust receives nothing in return for the lease with Dino, and denies that the lease is not beneficial to the Trust; the lease with Dino confers a substantial benefit of the Trust, and the lease with Dino permits the Trust to defer paying substantial estate taxes and is compensation by the rent paid by Dino;
- Trustees deny that there were 235,000 pounds of almond meat on hand at the time of Saverio's death; Petitioner presents no evidence to support that claim; Dino is specifically devised an undivided ½ interest in acres containing the almond orchards;
- Trustees allege that the lease is in no way a "sham" as Petitioner claims; Trustees allege that the lease was in effect prior to Saverio's death, and Trustees have continued the lease with Dino due to the benefit the lease provides to the Trust;
- Trustees deny that the Trust is entitled to almond crops grown or harvested on Trust property since Saverio's death; pursuant to terms of the lease, Dino is entitled to retain the proceeds from the sale of said almonds; the lease was in effect at the time of Saverio's death, and any almond meat on hand at Saverio's death rightfully belonged to Dino pursuant to the lease agreement;
- Trustees admit that Petitioner apprised Trustees' counsel of Petitioner's purported claims; however, Trustees deny that their failure to bring suit was negligent, wrongful or otherwise improper; to the contrary, Trustees allege there is no factual or legal basis for the claims raised by Petitioner;
- Trustees admit that Verni Olive Oil Company was specifically devised to Dino, and that the olive groves are held by the Trust, subject to the specific devise to Dino under the Merged Family Sub-Trust; Trustees deny Petitioner's allegation [that Dino has been converting the crops from the olive groves, oil inventory and supply on hand to his own benefit to the exclusion of other beneficiaries];
- Trustees admit that the olive groves, and any olive crop derived from Trust land, were property of the Trust; Trustees further admit that the olive groves were planted, cultivated and harvested using Trust resources;
- Trustees deny allegations of Dino's claim depleting Trust assets; Dino has not and does not convert the olive crop from the groves contained on Trust land; Trustees allege that Dino does not claim a right to the olive groves or the olive crops; however, Dino is specifically devised an undivided ½ interest in acres containing the olive groves; Trustees admit that the olive groves on Trust land and the olive crop derived therefrom rightfully belong to the Trust, subject to the specific devise to Dino; however, Trustees deny any allegation that Dino has improperly converted said olive crops;
- Trustees admit that Petitioner apprised Trustees' counsel of Petitioner's purported claims; however, Trustees deny that their failure to bring suit was negligent, wrongful or otherwise improper; to the contrary, Trustees allege there is no factual or legal basis for the claims raised by Petitioner;

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Response to Petition to Establish Claim of Ownership, continued:

- Trustees admit that several crops are grown on Trust land, but Trustees deny that they have failed to account for the several crops grown on Trust land during 2009, including cherries, plums, and grapes; it is further unclear what basis Petitioner has for her claim that Trustees failed to account for crops grown on the land during 2009;
- Trustees admit these types of crops are grown on Trust land, and Trustees continue to run the farming operations in the same manner that Saverio operated the operations prior to this death; these crops rightfully belong to the Trust, and Trustees deny allegations that Dino improperly converted any crops or crop inventory on hand at the time of Saverio's death;
- Trustees admit that Petitioner apprised Trustees' counsel of Petitioner's purported claims; however, Trustees deny that their failure to bring suit was negligent, wrongful or otherwise improper; to the contrary, Trustees allege there is no factual or legal basis for the claims raised by Petitioner;
- Trustees specifically deny all allegations of any alleged taking, concealing, and/or disposal of Trust property;
- Trustees admit that Saverio, Nick and Dino granted an option to DeYoung Properties to purchase certain real property, which included property held in the Trust and also property that was held in the name of Nick and Dino; Trustees deny that money received by Nick and Dino belongs to the Trust;
- Trustees lack sufficient knowledge to admit or deny allegations regarding the annuity that benefited Erlinda; Trustees are unaware of the source of funds used to purchase the annuity and it is unclear whether Trust funds were used to purchase the annuity in question.

Respondent Trustees pray for an Order:

3. That Petitioner take nothing by way of her *Petition*; and
4. For an award of attorneys' fees and costs of suit to Respondents.

Katie, 4		TEMPORARY EXPIRES 01/03/13		NEEDS/PROBLEMS/COMMENTS:	
Abigail, 8		GEORGE FICKENWORTH, maternal grandfather, is petitioner.		<u>CONTINUED FROM 11/05/12</u>	
		Father: MICHAEL JAY MCGILL		Minute Order from 11/05/12 states: The Court will entertain an order shortening time re issue of serving the father. The Court will also entertain an order re: specific orders to get children back into Fresno County. Ms. Harris will provide her address to Ms. Rusca.	
Cont. from 110512		Mother: MICHELLE DAWN HARRIS			
	Aff.Sub.Wit.				
✓	Verified				
	Inventory				
	PTC				
	Not.Cred.				
	Notice of Hrg	x			
	Aff.Mail	x			
	Aff.Pub.				
	Sp.Ntc.				
	Pers.Serv.	x			
✓	Conf. Screen				
	Letters	x			
✓	Duties/Supp				
	Objections				
	Video Receipt				
✓	CI Report				
	9202				
	Order	x			
	Aff. Posting				
	Status Rpt				
✓	UCCJEA				
	Citation				
	FTB Notice				
		Paternal Grandparents: UNKNOWN		Note: At the hearing re Temporary Guardianship, the mother stated that the children were now residing with a paternal uncle in Vancouver, Washington. The temporary was granted and it was ordered that the children be returned to California by 09/20/12. Mother filed a declaration on 09/20/12 stating that the paternal uncle was refusing to return the children to California.	
		Maternal Grandmother: KARRI FRANKS		1. Need proof of personal service at least 15 days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Guardian of the Person or Consent & Waiver of Notice or Declaration of Due Diligence for: - Michael Jay McGill (father) - Michelle Dawn Harris (mother)	
		Petitioner alleges: Mother has abandoned the children after CPS placed them in petitioner's care. The father is believed to be in jail pending domestic violence charges.		2. Need proof of service by mail at least 15 days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Guardian of the Person or Consent & Waiver of Notice or Declaration of Due Diligence for: - Paternal grandparents (unknown) - Karri Franks (maternal grandmother)	
		Court Investigator Samantha Henson filed a report on 10/31/12.		3. Need Order & Letters.	
				Reviewed by: JF	
				Reviewed on: 12/11/12	
				Updates:	
				Recommendation:	
				File 2 - McGill	

3

Page 2

Petitioners state the mother has passed out with the children in her care on at least one occasion. Their son (the father) returned home and took a photograph, which shows that the children were present (attached).

Petitioners also state the older child has not been sent to school on a regular basis, and that when the younger child was taken to the hospital, Petitioners state the mother requested the doctor write a note for the older child's absences, which the doctor declined.

Petitioners state that in August 2012, the mother called and requested that they pick up Blake, and when they got home at nearly 6:30 pm, the child said all he had to eat all day was a piece of string cheese. Also in August, Petitioners state the father reported that the mother had left a message that she couldn't care for the children, so Allison (Petitioners' daughter) picked them up and provided childcare.

Petitioners state guardianship is necessary to protect the children and that being in the care of the mother is detrimental to the children.

Petitioners' Supplemental Declaration filed 10-26-12 requests that the Court reconsider the request for immediate temporary guardianship pending the hearing and provides information regarding a text message from the mother and a printout from the mother's Facebook page, which Petitioners state may indicate that the mother is planning to take the child out of state (attached).

Kianna Marie Encinias (Mother) filed two declarations and proofs of service on 11-5-12:

1. **Declaration of Kianna Marie Encinias states she does not agree with the petition.** Declaration provides response to the allegations in the petition. See declaration. Mother states she receives food stamps and the family is never without food. The father has not provided as a father or a partner with stable job or medical. She is a good mother and the children are her #1 priority. The children are well-behaved, well-adjusted good children. If she were an unfit mother and the allegations of Petitioners were true, then this would not be the case.
 2. **Declaration of Gail Anne Erickson (Maternal Grandmother) states she does not agree with the allegations or proceedings.** Details provided.
-

Minute Order 11-5-12 (Temp): This court may not have jurisdiction. Counsel requests to keep general hearing due the pending family law matter. General hearing 1-3-13.

Examiner notes that nothing further has been filed in this guardianship matter; however, Examiner notes that a motion for joinder to the family law matter is set for hearing on 12-18-12 in Dept. 202.

Court Investigator Jennifer Daniel filed a report on 12-14-12.

4A Colin Schmock, Jr. & Kali Schmock (GUARD/P)
Atty Schlak, Lawrence W. Dr. (pro per Petitioner/maternal grandfather)
Atty Fearnside, William L. (for Carol Schmock, paternal grandmother)

Case No. 12CEPR00962

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Colin age: 2 years		Temporary Expires 1/3/13	NEEDS/PROBLEMS/COMMENTS:
Kali age: 4 months			
		DR. LAWRENCE W. SCHLAK , maternal grandfather, is Petitioner. Father: COLIN LEE SCHMOCK, SR. Mother: GENEVIEVE SCHLAK SCHMOCK - Court waived further notice on 11/07/12 Paternal grandfather: Deceased Paternal grandmother: Carol Schmock Maternal grandmother: Victoria Bowling	1. Need Notice of Hearing. 2. Need proof of personal service of the Notice of Hearing along with a copy of the Petitioner or consent and waiver of notice or declaration of due diligence on: a. Coling Lee Schmock, Sr. (father) 3. Need proof of service of the Notice of Hearing along with a copy of the Petition or consent and waiver of notice or declaration of due diligence on: a. Carol Schmock (paternal grandmother) b. Victoria Bowling (maternal grandmother)
Cont. from			
<input type="checkbox"/>	Aff.Sub.Wit.		
✓	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input type="checkbox"/>	Notice of Hrg	X	
<input type="checkbox"/>	Aff.Mail	X	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.	X	
✓	Conf. Screen		
✓	Letters		
✓	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report	X	
<input type="checkbox"/>	9202		
✓	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
✓	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
		Petitioner alleges that both parents are unfit to care for the minors at this time. The father is physically and psychologically abusive to the mother and children. There is a history of domestic violence between the parents and the father has a history of mental illness and is currently on a 5150 hold at the VA hospital. Mother is currently staying at a shelter with the children. Petitioner also filed: 1. Civil Subpoenas (Duces Tecum) for Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Trial of Hearing and Declaration: <ul style="list-style-type: none"> Ordering Fresno County Sheriff, Irma Ramirez of Child Protective Services, and Clovis Police Department to provide records or appear. Subpoenas indicate personal service on parties 2. Additional Subpoenas (Duces Tecum) for Personal Appearance and Production of Documents... were served on 11/15/12 on: Alex Renteria & Irma Ramirez of CPS and Victoria & Darrel Bowling	Court Investigator Julie Negrete to provide: 1. Court Investigator's report 2. Clearances
		Reviewed by: KT	
		Reviewed on: 12/11/12	
		Updates:	
		Recommendation:	
		File 4A - Schmock	

4A

Colin age: 2 years		CAROL SCHMOCK , paternal grandmother, is Petitioner. Father: COLIN LEE SCHMOCK, SR. – served by mail <u>without</u> a copy of the Petition on 11/08/12 Mother: GENEVIEVE SCHLAK SCHMOCK – served by mail <u>without</u> a copy of the Petition on 11/08/12; the Court waived further notice on 11/07/12 Paternal grandfather: Deceased Maternal grandfather: Lawrence Schlak – waives notice per minute order dated 11/7/12. Maternal grandmother: Victoria Bowling – served on 11/8/12.	NEEDS/PROBLEMS/COMMENTS: 1. Need proof of <u>personal</u> service of the Notice of Hearing along with a copy of the petition or consent and waiver of notice or declaration of due diligence on: a. Colin Lee Schmock, Sr., father (Note: father was <u>mailed</u> notice without a copy of the petition.) 2. Proof of service for the maternal grandmother, Victoria Bowling, indicates the notice was sent without a copy of the Petition. Probate Code §1511(a) requires a copy of the petition to be service with the Notice of Hearing. 3. Need Order 4. Need Letters
Kali age: 4 months			
Cont. from			
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input checked="" type="checkbox"/>	Aff.Mail	W/O	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.	X	
<input checked="" type="checkbox"/>	Conf. Screen		
<input type="checkbox"/>	Letters	X	
<input checked="" type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input checked="" type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input type="checkbox"/>	Order	X	
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input checked="" type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
Petitioner alleges neither parent is fit to care for the children. The father suffers from mental health issues and the mother is bi-polar and very unstable. Petitioner states that she has cared for Colin Schmock, Jr. when the parents lived with her for over 9 months. Petitioner states that she wishes to provide her grandchildren a safe and stable home. She states that she is willing to get restraining orders to keep the parents away from the children if necessary due to their instability. Petitioner states that she was shocked to learn that the maternal grandfather obtained temporary guardianship and took the children out of the state of California. Petitioner states that she believes this was intentional on the mother's part to keep the paternal family permanently away from the children. Petitioner alleges that Mr. Schlak (maternal grandfather - competing petitioner) also suffers from PTSD, has a history of violence and unstable home life, having had several divorces. Petitioner believes that it is in the children's best interest to be in her care as she is best qualified to care for the children.			
Reviewed by: KT Reviewed on: 12/11/12 Updates: 1/2/13 Recommendation: File 4B – Schmock			

Objections of Dr. Lawrence W. Schlak to the appointment of Carol Schmock as guardian filed on 12/24/12.

Court Investigator Julie Negrete's Report filed 12/18/12.

DOD: 4-9-12		ROBERT FRAZIER , Son, is Petitioner	NEEDS/PROBLEMS/COMMENTS:
		40 days since DOD	
		No other proceedings	
		I&A \$65,000.00 (residential real property)	
<input type="checkbox"/>	Aff.Sub.Wit.		
✓	Verified		
✓	Inventory		
✓	PTC		
	Not.Cred.		
✓	Notice of Hrg		
✓	Aff.Mail	W	
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		
			Reviewed by: skc
			Reviewed on: 12-11-12
			Updates:
			Recommendation: SUBMITTED
			File 5 - Frazier

NEEDS/PROBLEMS/COMMENTS:

Atty Wright, Robert S. (for Rosario Ricardo Forestiere – Spouse – Petitioner)

Atty Forestiere, Andre (Pro Per – Son – Objector)

Petition for Letters of Administration; Authorization to Administer Under IAEA with
Limited Authority (Prob. C. 8002, 10450)

DOD: 9-21-12		SPECIAL ADMINISTRATION EXPIRES 1-3-13	NEEDS/PROBLEMS/COMMENTS:
	Aff.Sub.Wit.		
✓	Verified	Limited IAEA – ok	
	Inventory		
	PTC	Decedent died intestate	
	Not.Cred.		
✓	Notice of Hrg	Residence: Fresno	
✓	Aff.Mail	Publication: Fresno Business Journal	
✓	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
✓	Letters		
✓	Duties/Supp		
✓	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		

ROSARIO RICARDO FORESTIERE, Spouse, is Petitioner and requests appointment as Administrator with Limited IAEA without bond.

Estimated value of Estate:
Real property: \$155,000.00

Probate Referee: Steven Diebert

Andre Forestiere, Son, filed Opposition to Petition on 12-18-12.

SEE PAGE 2

Note: Petitioner was appointed Special Administrator on 12-4-12 and authorized to inspect and remove documents from the real property for safekeeping with the attorney.

1. Petitioner requests appointment without bond and states one or more beneficiaries may refuse to waive bond due to a well-established history of family disharmony and noncooperation. Petitioner states he is the husband of the decedent and is responsible for his deceased spouse's debts. He is a longtime resident of Fresno owns a historical landmark, and has substantial assets of his own. Petitioner prays the Court waive bond.

The Court may require waivers of bond from the following heirs:

- Lyn A. Kosewski (Daughter)
- Valery L. Forestiere (Daughter)
- Nicholas P. Forestiere (Son)
- Andre H. Forestiere (Son)
- Marc C. Forestiere (Son)
- Juliet M. Forestiere (Daughter)

If required, the Court will set status hearing for the filing of bond in the amount of \$155,000.00 for:

- Friday 2-22-13.

Reviewed by: skc

Reviewed on: 12-12-12

Updates:

Recommendation:

File 7 - Forestiere

Page 2

Objector states that over the years he and other family members witnessed verbal and emotional abuse of his mother by his father (Petitioner). From approx. 2000-2003, Petitioner began to misappropriate community funds in the form of the pension which he placed into a private bank account for his own personal use and enjoyment. He refused to permit the pension funds to be used toward community expenses. In Aug. 2003, he entered into a settlement with Decedent wherein he was required to repay \$33,000.00 (attached).

Decedent wanted the assistance of legal counsel to have her community interest in the Underground Gardens placed into a trust. In Feb. 2008, she attempted to reach her son Nicholas for assistance in finishing the trust. That same day, she signed over her interest in the Underground Gardens for a one-half interest in the residence. Later that day, she told Objector that she could no longer take Petitioner's verbal abuse. She was 75 and in declining physical and mental health.

In October 2012, Nicholas stated he did not prepare the documents for the property exchange, and that the exchange prevented Petitioner from throwing the decedent out of her home. At the residence, Objector informed family members that they should first obtain permission of the court to enter and search the residence; however, neither Objector nor the sheriffs attempted to physically prevent their entry.

Objector states Petitioner has a conflict of interest in that he may be ordered by the Court to restore real property interests to the estate of Lorraine Forestiere and/or pay damages and attorney fees to the estate under Family Code § 1100 and California Financial Elder Abuse Statutes.

Attached:

- Memorandum of Understanding re: \$33,000.00 (signed by Decedent only) and copy of check
 - Email communications to try to determine existence of a trust
 - 2008 Letter from Decedent to Nicholas to prepare a trust
 - Page 1 of Interspousal Transfer Grant Deed in which Decedent granted certain real property to Petitioner as his sole and separate property. (Pages 2 and 3 indicating the property transferred are not attached.)
 - **Memorandum of Points and Authorities (See P&A for details, citations)**
-

Examiner's Note: Objector opposes the petition based on conflict, but does not appear to request specific relief in the Opposition.

The Court may require clarification: Objector does not appear to request appointment of another person as Administrator, as he has not filed a competing petition, only the Opposition.

Examiner notes that there is mention of a possible trust: All parties should be aware pursuant to Local Rule 7.1.2 that the Court cannot make orders regarding trust matters in this estate matter. Trust matters must be filed under separate cover and addressed pursuant to the appropriate statutes.

Atty Sierra, Carolina (pro per – aunt/Petitioner)
 Atty Lee, Sandy (pro per – aunt's partner/Petitioner)
 Atty Rodriguez, Rachel (pro per – maternal grandmother/Petitioner)

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Jordan, 2		<u>NO TEMPORARY REQUESTED</u>	NEEDS/PROBLEMS/COMMENTS:
Bernice, 18 mos.			
Cindi, 7 months		CAROLINA T. SIERRA and SANDY LEE , maternal aunt and partner are Petitioners. Father: SALVADOR VILLA – Consent & Waiver of Notice filed 10/23/12 Mother: JESSICA ALLEN - Consent & Waiver of Notice filed 10/23/12 Paternal grandfather: ROBERTO VILLA – deceased Paternal grandmother: PAULINE RODRIGUEZ - Consent & Waiver of Notice filed 11/28/12 Maternal grandfather: JESSE ALLEN – deceased Maternal grandmother: RACHEL RODRIGUEZ – Consent & Waiver of Notice filed 11/28/12	This Petition pertains to Bernice only. Petition re Jordan & Cindi is set for hearing on 01/30/13.
Cont. from			
<input type="checkbox"/>	Aff.Sub.Wit.		
✓	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input type="checkbox"/>	Notice of Hrg	n/a	
<input type="checkbox"/>	Aff.Mail	n/a	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.	n/a	
✓	Conf. Screen		
✓	Letters		
✓	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
✓	CI Report		
<input type="checkbox"/>	9202		
✓	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
✓	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
		Petitioner alleges that Bernice needs a guardian to care and make sure she has a place to live, clothing, etc. and to teach her right from wrong. Petitioners have had Bernice in their care since she came home from the hospital. Court Investigator Samantha Henson filed a report on 12/19/12.	Reviewed by: JF Reviewed on: 12/12/12 Updates: 12/20/12 Recommendation: File 8 - Villa

Petition for Appointment of Conservator of the Person (Prob. C. 1510)

Age:		NO TEMPORARY REQUESTED ANGELA R. WHITE , Mother, is Petitioner and requests appointment as Limited Conservator of the Person with medical consent powers and additional powers under Probate Code §§ 2351.5, 1830(b), and additional orders limiting the civil and legal rights of the proposed Conservatee. Voting rights affected Petitioner states: Khyrie has non-verbal autism and requires assistance for every aspect of his daily needs. He is unable to make independent decisions for himself. Petitioner seeks limited conservatorship, but also requests all powers under §2351.5 (fix residence, consent to marriage, decide right to contract, withhold medical consent, etc.), §1830(b) (manage benefits, possess wages, contract and make other obligations, and compromise claims), and additional orders limiting the civil and legal rights of the proposed Conservatee including the items listed in Attachment 1j. Court Investigator Jennifer Daniel filed a report on 12-11-12.	NEEDS/PROBLEMS/COMMENTS: <u>Court Investigator advised rights on 11-30-12.</u> <u>Voting rights affected – need minute order.</u> 1. Need filing fee (\$435) 2. Need Capacity Declaration in support of request for medical consent powers. 3. Need Video Receipt per Local Rules. 4. Need proof of service of Notice of Hearing at least 30 days prior to the hearing on Central Valley Regional Center (CVRC) pursuant to Probate Code §1822(e). 5. Petitioner has requested <u>limited</u> conservatorship, which requires a finding by the Court that the proposed Conservatee lacks capacity to perform <u>some, but not all</u> tasks necessary to provide for his health, food, clothing, and shelter. However, Petitioner states Khyrie requires assistance for every aspect, and also requests all of the additional consent powers be granted. If <u>limited</u> conservatorship is requested, a <u>separate</u> assessment of the proposed conservatee's capabilities in a report and recommendation from CVRC is required by Probate Code §1827.5. Petitioner may wish to review the code as well as the Duties of Conservator Form GC-348 re: the difference between <u>limited</u> and <u>general</u> conservatorship. <u>Alternatively, pursuant to Probate Code §1825.5(d) and based on the Court Investigator's recommendation, Examiner has prepared revised Order and Letters for general conservatorship. Please note, however, that medical consent powers cannot be included unless a Capacity Declaration is filed in support of that request.</u>
DOB:			
Aff.Sub.Wit.			
✓ Verified			
Inventory			
PTC			
Not.Cred.			
✓ Notice of Hrg			
✓ Aff.Mail	W		
Aff.Pub.			
Sp.Ntc.			
✓ Pers.Serv.			
✓ Conf. Screen			
✓ Letters			
✓ Duties/Supp			
Objections			
Video Receipt	X		
✓ CI Report			
9202			
✓ Order			
Aff. Posting			
Status Rpt			
UCCJEA			
✓ Citation			
FTB Notice			
Reviewed by: skc			
Reviewed on: 12-11-12			
Updates:			
Recommendation:			
File 9 - Taylor			

Petition for Appointment of Conservator of the Person (Prob. C. 1510)

Age: 29		NO TEMPORARY REQUESTED ANGELA R. WHITE , Mother, is Petitioner and requests appointment as Limited Conservator of the Person with medical consent powers and additional powers under Probate Code §§ 2351.5, 1830(b), and additional orders limiting the civil and legal rights of the proposed Conservatee. Petitioner states: Tristan has been diagnosed autistic and mentally retarded. His age level is about 8 years old. He is developmentally disabled. While he can sign for himself, walk to the store, dress himself and perform several household duties, he is unable to understand basic instructions or carry out and follow other aspects of his daily life. He would not be able to make arrangements to take himself to the doctor or provide for his own shelter of his own volition. He would not know of any resources or be able to utilize any resources that could assist him with these necessities. Court Investigator Samantha Henson filed a report on 12-19-12.	NEEDS/PROBLEMS/COMMENTS:	
DOB: 6-18-83			<u>Court Investigator advised rights on 11-30-12.</u>	
			<u>Voting rights affected – need minute order.</u>	
			6. Need filing fee (\$435).	
			7. Need Capacity Declaration in support of request for medical consent powers.	
			8. Need Video Receipt per Local Rules.	
			9. Need proof of service of Notice of Hearing at least 30 days prior to the hearing on Central Valley Regional Center (CVRC) pursuant to Probate Code §1822(e).	
			10. Petitioner has requested <u>limited</u> conservatorship, which requires a finding by the Court that the proposed Conservatee lacks capacity to perform <u>some, but not all</u> tasks necessary to provide for his health, food, clothing, and shelter. However, Petitioner requests <u>all</u> of the additional consent powers/restrictions be granted (in other words, negating the “ <u>limited</u> ” part). <u>If limited conservatorship is requested, a separate assessment of the proposed conservatee’s capabilities in a report and recommendation from CVRC is required by Probate Code §1827.5.</u> Petitioner may wish to review the code as well as the Duties of Conservator Form GC-348 re: the difference between <u>limited</u> and <u>general</u> conservatorship. <u>Alternatively, pursuant to Probate Code §1825.5(d), Examiner has prepared revised Order and Letters for general conservatorship. Please note, however, that medical consent powers cannot be included unless a Capacity Declaration is filed in support of that request.</u>	
Aff.Sub.Wit.			Reviewed by: skc	
✓	Verified		Reviewed on: 12-12-12	
	Inventory		Updates: 12-20-12	
	PTC		Recommendation:	
	Not.Cred.		File 10 - Taylor	
✓	Notice of Hrg			
✓	Aff.Mail		w	
	Aff.Pub.			
	Sp.Ntc.			
✓	Pers.Serv.		w	
✓	Conf. Screen			
✓	Letters			
✓	Duties/Supp			
	Objections			
	Video Receipt	X		
✓	CI Report			
	9202			
✓	Order			
Aff. Posting				
Status Rpt				
UCCJEA				
✓	Citation			
FTB Notice				

			KATHRYN A. SPLIVALO is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
			Petitioner alleges:	
Cont. from			The Marital Trust Under the Will of Howard Parkerton was established by Order Approving the First and Final Account of Executor, dated 5/10/1979. Myonza K. Parkerton, spouse of the decedent and Herschel B. Green, were appointed Trustees of the Trust.	
	Aff.Sub.Wit.			
✓	Verified		Herschel B. Green died on 11/21/1988 and Myonza K. Parkerton died on 7/14/2012.	
	Inventory		As a result of the deaths to Herschel B. Green and Myonza K. Parkerton, there is a vacancy in the position of Trustee.	
	PTC			
	Not.Cred.		Petitioner is the sole current income beneficiary of the Trust. Petitioner has two adult children who are the remainder beneficiaries of the Trust.	
✓	Notice of Hrg		The provisions of the Trust do not provide for a method of filling the vacancy in the office of trustee. Petitioner hereby requests the Court appoint Petitioner, Kathryn A. Splivalo, as successor trustee to fill the vacancy and to serve without bond.	
✓	Aff.Mail	W/	Petitioner consents to act as Trustee.	
	Aff.Pub.		Petitioner's children, the remainder beneficiaries consent to the appointment of Petitioner as successor trustee to serve without bond.	
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			
			Wherefore, Petitioner prays for an Order:	
			1. That the Court appoint Kathryn A. Splivalo as Trustee of the Marital Trust under the Will of Howard F. Parkerton, to serve without bond.	
				Reviewed by: KT
				Reviewed on: 12/12/12
				Updates:
				Recommendation:
				File 11 - Parkerton

Petition for Appointment of Successor Trustee to Fill Vacancy [Prob. C. 15660(d)]

			KATHRYN A. SPLIVALO is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
			Petitioner alleges:	
Cont. from			The Residuary Trust Under the Will of Howard Parkerton was established by Order Approving the First and Final Account of Executor, dated 5/10/1979. Myonza K. Parkerton, spouse of the decedent and Herschel B. Green, were appointed Trustees of the Trust.	
	Aff.Sub.Wit.			
✓	Verified		Herschel B. Green died on 11/21/1988 and Myonza K. Parkerton died on 7/14/2012.	
	Inventory			
	PTC		As a result of the deaths to Herschel B. Green and Myonza K. Parkerton, there is a vacancy in the position of Trustee.	
	Not.Cred.			
✓	Notice of Hrg		Petitioner is the sole current income beneficiary of the Trust. Petitioner has two adult children who are the remainder beneficiaries of the Trust.	
✓	Aff.Mail	W/		
	Aff.Pub.		The provisions of the Trust do not provide for a method of filling the vacancy in the office of trustee. Petitioner hereby requests the Court appoint Petitioner, Kathryn A. Splivalo, as successor trustee to fill the vacancy and to serve without bond.	
	Sp.Ntc.			
	Pers.Serv.		Petitioner consents to act as Trustee.	
	Conf. Screen			
	Letters		Petitioner's children, the remainder beneficiaries consent to the appointment of Petitioner as successor trustee to serve without bond.	
	Duties/Supp			
	Objections		Wherefore, Petitioner prays for an Order:	
	Video Receipt			
	CI Report		That the Court appoint Kathryn A. Splivalo as Trustee of the Residuary Trust under the Will of Howard F. Parkerton, to serve without bond.	
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt		Reviewed by: KT	
	UCCJEA			
	Citation		Reviewed on: 12/12/12	
	FTB Notice			
			Updates:	
			Recommendation:	
			File 12 - Parkerton	

Atty Trejo, Ramona M. (pro per – non-relative/Petitioner)

Petition for Appointment of Temporary Guardian of the Person

Nathan, 6	GENERAL HEARING 02/13/13		NEEDS/PROBLEMS/COMMENTS:
Daniel, 5	<p>RAMONA TREJO, non-relative, is Petitioner.</p> <p>Father: DANIEL BOONE</p> <p>Mother: JENNIE MENDEZ – Consent & Waiver of Notice filed 12/13/12</p> <p>Paternal grandparents: NOT LISTED</p> <p>Maternal grandparents: NOT LISTED</p> <p>Petitioner alleges that the father is admittedly not taking his medication for mental health issues and has relapsed into using meth. The boys' education is suffering due to numerous absences from school. Petitioner states that she raised the children's mother as a foster mother and has always been a part of the boys' lives. Petitioner states that she considers them to be her grandsons. Petitioner feels it's in the boys' best interest to be in a stable, structured and nurturing home, which she has provided in the past, and would like to do so again.</p>		
Cont. from			<p>1. Need Notice of Hearing.</p> <p>2. Need proof of personal service at least 5 court days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Guardian of the Person <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for:</p> <p>- Daniel Boone (father)</p> <p>3. Petitioner indicates the children may have Indian ancestry. Therefore, need Notice of Child Custody Proceeding for Indian Child (Form ICWA-030) to be completed and returned to the Probate Clerk's Office as soon as possible. See Probate Code §1460.2, and CA Rules of Court 7.1015.</p> <p>The general guardianship hearing on 02-13-13 cannot go forward unless this form has been served on the child's parents; any Indian custodian; any Indian tribe that may have a connection to the child; the Bureau of Indian Affairs (BIA), and possibly the U.S. Secretary of the Interior, by certified or registered U.S. Mail, return receipt requested.</p> <p>A blank copy of the form is in the file for Petitioner, and it should be completed and returned <u>as soon as possible</u> to the Probate Clerk's Office. The Probate Clerk's Office will complete service.</p> <p>At the general hearing on 02-13-13, continuance may be required to ensure that the appropriate parties and agencies received 60 days' notice. See Probate Code 1460.2, and CA Rules of Court 7.1015.</p>
Aff.Sub.Wit.			
✓ Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg	x		
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.		x	
✓ Conf. Screen			
✓ Letters			
✓ Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
✓ Order			
Aff. Posting			
Status Rpt			
✓ UCCJEA			
Citation			
FTB Notice			
Reviewed by: JF			
Reviewed on: 12/14/12			
Updates:			
Recommendation:			
File 13 – Boone-Mendez			

Aliyah, 7		<p align="center"><u>GENERAL HEARING 02/13/13</u></p> <p>THERESA AROSTIGUI, maternal grandmother, is Petitioner.</p> <p>Father: MODESTO ALANIS, III</p> <p>Mother: PAULA S. LOPEZ ALANIS</p> <p>Paternal grandfather: MODESTO ALANIS, JR.; served notice by mail 12/20/2012. Paternal grandmother: MARGARET ALANIS; served notice by mail 12/20/2012.</p> <p>Maternal grandfather: PAUL M. LOPEZ; served notice by mail 12/20/2012.</p> <p>Petitioner alleges that the children's mother is an alcoholic and was recently arrested for a DUI. The children's father is currently incarcerated and has a history of being in and out of prison, further he has not had a relationship with the children. The mother has a pattern of leaving the children with petitioner and leaving for the past 5 years. Petitioner alleges that the mother does not ensure that the children attend school when they are in her care. Further, Petitioner alleges that the mother leaves the children in the care of the paternal grandmother frequently, which Petitioner does not feel is a safe environment due to the number of people who live in the Paternal grandmother's home.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need proof of personal service at least 5 court days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Temporary Guardian of the Person or Consent & Waiver of Notice or Declaration of Due Diligence for:</p> <ul style="list-style-type: none"> - Modesto Alanis, III (father) - Paula S. Lopez Alanis (mother) 	
Saphira, 3				
Cont. from				
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
<input checked="" type="checkbox"/>	Aff.Mail			W/O
<input type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input type="checkbox"/>	Pers.Serv.			x
<input checked="" type="checkbox"/>	Conf. Screen			
<input checked="" type="checkbox"/>	Letters			
<input checked="" type="checkbox"/>	Duties/Supp			
<input type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input checked="" type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			
<p>Reviewed by: JF</p> <p>Reviewed on: 12/19/12</p> <p>Updates: 1/2/13</p> <p>Recommendation:</p> <p>File 14 - Alanis</p>				

Petition for Appointment of Temporary Guardian of the Person (Prob. C. 2250)

Age: 2		GENERAL HEARING 02/19/13		NEEDS/PROBLEMS/COMMENTS:	
		YOLANDA LANDIN , maternal grandmother, is Petitioner.		1. Need Notice of Hearing .	
		Father: RICHARD HERRERA		2. Need proof of personal service at least 5 court days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Temporary Guardian <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for:	
Cont. from		Mother: DANIELLE K. LANDIN – Consent & Waiver of Notice filed 12/17/12		- Richard Herrera (father)	
	Aff.Sub.Wit.		Paternal grandfather: RICK HERRERA	Note: There is currently an active Family Law case regarding custody of this child (12CEFL02792) with future hearing dates for mediation. Petitioner has joined the family law matter.	
✓	Verified		Paternal grandmother: GLORIA		
	Inventory		Maternal grandfather: KELLY LANDIN		
	PTC				
	Not.Cred.				
	Notice of Hrg	x			
	Aff.Mail				
	Aff.Pub.				
	Sp.Ntc.				
	Pers.Serv.	x			
✓	Conf. Screen				
✓	Letters				
✓	Duties/Supp				
	Objections				
	Video Receipt				
	CI Report				
	9202				
✓	Order				
	Aff. Posting				
	Status Rpt				
✓	UCCJEA				
	Citation				
	FTB Notice				
				Reviewed by: JF	
				Reviewed on: 12/19/12	
				Updates:	
				Recommendation:	
				File 15 - Herrera	

16 Jacob Martin Elias Farino (GUARD/P)
 Atty Jarvis, Carol V. (pro per – maternal grandmother/Petitioner)
 Atty Farino, Danyell (pro per – maternal step-grandmother/Petitioner)

Case No. 12CEPR01138

Petition for Appointment of Temporary Guardianship of the Person

Age: 2	<u>GENERAL HEARING 02/19/13</u>	NEEDS/PROBLEMS/COMMENTS:
	CAROL V. JARVIS , maternal grandmother and DANYELL FARINO , maternal step-grandmother, are Petitioners.	1. Need Notice of Hearing .
Cont. from	Father: NOT LISTED	2. Need proof of personal service at least 5 court days before the hearing of Notice of Hearing with a copy of the Petition for Appointment of Temporary Guardian of the Person <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for:
<input type="checkbox"/> Aff.Sub.Wit.	Mother: ALEXANDRIA C. FARINO	- Father (not listed)
<input checked="" type="checkbox"/> Verified	Paternal grandparents: NOT LISTED	- Alexandria C. Farino (mother)
<input type="checkbox"/> Inventory	Maternal grandfather: JON B. FARINO	
<input type="checkbox"/> PTC	Petitioners allege that the mother is currently using drugs and has mental health issues making her incapable of caring for Jacob at this time. Petitioners state that they co-parent Jacob and that he has lived with either of them since birth. Petitioners allege that the mother has violent outbursts and has threatened to kill herself and others. Petitioners state that they are fearful that the mother will try to take Jacob because she uses him to make others do what she wants and also to get money for her drug use. Petitioners state that temporary guardianship is necessary to keep Jacob safe.	
<input type="checkbox"/> Not.Cred.		
<input type="checkbox"/> Notice of Hrg		
<input type="checkbox"/> Aff.Mail		
<input type="checkbox"/> Aff.Pub.		
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.		
<input checked="" type="checkbox"/> Conf. Screen		
<input checked="" type="checkbox"/> Letters		
<input checked="" type="checkbox"/> Duties/Supp		
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		
<input type="checkbox"/> Status Rpt		
<input checked="" type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
		Reviewed by: JF
		Reviewed on: 12/20/12
		Updates:
		Recommendation:
		File 16 - Farino